IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.2648 of 2007
ASHA DEVI & ORS
Versus
STATE OF BIHAR & ANR

For the petitioners : Mr.N.K.Agrawal, Sr. Advocate,
with Mr. D. N. Tiwari, Advocate.
For the Opp. Party : Mr. Pramod Manbansh.

11 21-8-2008 This is an application for quashing the entire prosecution against the petitioners arising out of Complaint Case No. 119/2005 including the order, dated 2.2.2006 by which cognizance has been taken against the petitioners by the Chief Judicial Magistrate, Katihar.

Petitioner no.1 is the wife of Shankar Lal Agrawal, opposite party no.2 and petitioners 2 to 7 are the family members of petitioner no.1. Petitioner no.1 and the opposite party no.2 were married on 27.6.2004. The dispute between them started by filing a criminal case on 13.3.2005 under section 498A of the Penal Code and since then several cases have been filed by the parties. The cases filed by the parties are as follows :

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(1) Purnea Sadar PS Case No. 80 of 2005 under section 498A of the Penal Code filed by Asha Devi.

(2) Complaint Case No. 119 of 2005 filed by Shankar Lal Agrawal under sections 448, 380, 380/34, 363/34, 323 and 504 of the Penal Code.

(3) Matrimonial Case No.5 of 2005 filed by Shankar Lal Agrawal for restitution of conjugal rights.

(4)Maintenance Case No. 630 of 2006 filed by Asha

Devi before the Principal Judge, Family Court, Purnea for maintenance.

(5) Divorce Suit No. 132 of 2006 filed by the wife at Purnea.

The present quashing application has been filed against the Complaint Case No. 119/2005 filed by opposite party no.2. During the proceedings the parties appeared along with their guardians and after much discussion and counseling the parties agreed to disagree and decided that they would amicably part and dissolve their marriage.

This decision was finally taken on 4.8.2008 in chambers after giving the parties opportunities on 26.6.2008 and 11.7.2008 to re-think over the matter and the court also tried to get the matter amicably settled not only through court but also through the counsel. However, both the parties were not ready to live with each other and, thus, finally consented that this court should pass an order which would not only settle the dispute with respect to the divorce case but also settle all other cases which are pending between them. This court is accordingly directing the parties to act in accordance with the agreement which was made in chambers which is as under :

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(i) Petitioner no.1 and opposite party no.2 should file an application under section 13-B of the Hindu Marriage Act before the Principal Judge, Family Court, Purnea in Divorce Case No.132 of 2006 which is already pending there for a consent decree of divorce.

The petition of divorce should be filed within one month from the date of receipt of a copy of this order. The court then should pass a decree of divorce within six months in accordance with law.

(ii) Since the parties have agreed to part, they have also agreed that opposite party no.2 will pay a sum of Rs. 3 lakhs to petitioner no. 1 before the final decree of divorce is passed.

(iii) The decree should contain the fact that Rs. 3 lakhs has been paid to Asha Devi by way of one time settlement.

(iv) As stated above there are five odd cases pending between the parties, both criminal and matrimonial cases arising due to the differences between the parties. All such cases may be withdrawn by either parties, on an application filed on their behalf before the court concerned.

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(v) In the mean time proceedings with respect to Maintenance case and the case under section 498A of the Penal Code and the present case shall remain stayed.

(vi) The parties have agreed that each of them will be free to enter into marriage after the decree of divorce is pronounced.

(vii) This court finds that the parties have settled the problems which has resulted in filing of several criminal cases by the parties. In that view it would not be in the interest of justice to allow such cases to proceed although ordinarily the court would have to enter into the merits of allegations before quashing of the applications.

(viii) Since the parties have agreed that no further

purpose would be served if a consent decree of divorce is granted by the court on one hand and on the other hand criminal cases and other cases between petitioner no.1 and opposite party no. 2 are allowed to remain pending in the different courts. All such cases should stand withdrawn / disposed of / quashed as the case may be. It would in fact defeat the very purpose of filing a consent decree of divorce if the cases remain pending and parties continue to litigate. In the short period during which the marriage was sustained i.e. between 27.6.2004 to 16.11.2004 and the intervening period of four years the relationship between the parties has become bitter and beyond repair and as such this court has by consent passed this order to allow petitioner no.1 and opposite party no. 2 to lead a peaceful life in future.

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Accordingly, the order, dated 2.2.2006 passed in Complaint Case No. 119 of 2005 by the Chief Judicial Magistrate, Katihar is hereby quashed.

In the result, this application stands disposed of with the aforesaid observations and directions.

Let a copy of this order be sent to the Principal Judge, Family Court, Purnea by Fax.

haque **(Sheema Ali Khan, J.)**